MONTANA LEGISLATIVE HISTORY

Chapter 90 19 95

Bill H 47 S _____ Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Employment Relations		
Hearing Date(s)	Jan 06	✓ C	Hearing Date(s)	Jan 12	✓ C
		C		Jan 19	✓ C
		C			C
		C			C
Date Out	Jan 06	✓ C		Jan 19	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 45 INTRODUCED BY GALVIN

PROVIDE THAT BEGINNING WITH THE 2005 REGULAR LEGISLATIVE SESSION, THE LEGISLATURE WILL HAVE AN 80-MEMBER HOUSE OF REPRESENTATIVES AND A 40-MEMBER SENATE

12/27	INTRODUCED		
12/29	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO STATE ADMINISTRATION		
1/04	FISCAL NOTE RECEIVED		
1/04	FISCAL NOTE PRINTED		
1/06	HEARING		
2/01	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 46 INTRODUCED BY SIMON

EXPAND CRIME OF ARSON TO INCLUDE PROPERTY NOT CURRENTLY INCLUDED AND TO INCLUDE DAMAGE OR DESTRUCTION OF ONE'S OWN PROPERTY TO OBTAIN A PECUNIARY OR OTHER GAIN THROUGH FRAUD OR DECEPTION

12/27	INTRODUCED		
12/29	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/03	HEARING		
1/06	FISCAL NOTE RECEIVED		
1/07	FISCAL NOTE PRINTED		
1/09	TABLED IN COMMITTEE		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	54	44
1/28	3RD READING FAILED	48	49
1/30	RECONSIDERED PREVIOUS ACTION	50	49
1/31	3RD READING PASSED	51	46
	TRANSMITTED TO SENATE		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
3/01	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	43	0
3/06	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 124		
	EFFECTIVE DATE: 10/01/95		

HB 47 INTRODUCED BY LARSON

GENERALLY REVISE LAWS RELATING TO BOARD OF PERSONNEL APPEALS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

12/27	INTRODUCED
12/29	FISCAL NOTE REQUESTED
1/02	FIRST READING
1/02	REFERRED TO BUSINESS & LABOR
1/06	HEARING
1/06	COMMITTEE REPORT—BILL PASSED

1/06	FISCAL NOTE RECEIVED		
1/06	FISCAL NOTE PRINTED		
1/09	2ND READING PASSED	94	6
1/10	3RD READING PASSED	95	4
	TRANSMITTED TO SENATE		
1/11	FIRST READING		
1/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/17	HEARING		
1/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
1/23	2ND READING CONCURRED	49	0
1/24	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/01	2ND READING AMENDMENTS CONCURRED	95	1
3/02	3RD READING AMENDMENTS CONCURRED	95	4
3/03	SIGNED BY SPEAKER		
3/04	SIGNED BY PRESIDENT		
3/06	TRANSMITTED TO GOVERNOR		
3/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 90		
	EFFECTIVE DATE: 03/09/95		

HB 48 INTRODUCED BY LARSON

REQUIRE PASSENGER TRANSPORT VEHICLES TO COMPLY WITH MOTOR CARRIER SAFETY RULES, WHETHER OR NOT THE TRANSPORTATION IS FOR HIRE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

12/27	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/06	HEARING		
1/12	COMMITTEE REPORT—BILL PASSED		
1/13	2ND READING PASSED	49	46
1/16	3RD READING PASSED	59	40
	TRANSMITTED TO SENATE		
1/17	FIRST READING		
1/17	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/24	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
2/28	2ND READING CONCURRED	47	2
3/01	3RD READING CONCURRED	46	1
	RETURNED TO HOUSE		
3/02	SIGNED BY SPEAKER		
3/03	SIGNED BY PRESIDENT		
3/03	TRANSMITTED TO GOVERNOR		
3/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 80		
	EFFECTIVE DATE: 03/07/95		

HB 49 INTRODUCED BY KADAS

ALLOW A COUNTY HIGH SCHOOL DISTRICT, WHETHER OR NOT THE COUNTY HIGH SCHOOL DISTRICT IS UNIFIED WITH AN ELEMENTARY DISTRICT, TO AUTHORIZE A LEVY OF NOT MORE THAN 2 MILLS ON THE DISTRICT

12/28	INTRODUCED
1/02	FIRST READING
1/02	REFERRED TO EDUCATION & CULTURAL RESOURCES
1/05	FISCAL NOTE RECEIVED

HOUSE BILL NO. 47

INTRODUCED BY LARSON

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT; CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT; CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212, 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision -- quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who ~~shall be~~ is the ~~chairperson~~ presiding officer.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.

(4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual~~,~~ who ~~shall be a person who~~ qualifies under subsection (3)(a)(iii)~~,~~ to serve in the place of the ~~chairperson~~ presiding officer in that proceeding. ~~and he~~ The individual selected shall participate in the ~~decision~~ decisions in that proceeding. There ~~shall~~ may be only one ~~additional chairperson~~ presiding officer replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.

(6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

~~(6)~~(7) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 2-18-1002, MCA, is amended to read:

"**2-18-1002. Grievance procedure -- hearing -- order.** (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

(2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department ~~requiring such~~ to require an action ~~of~~ by the department ~~as will~~ to resolve the employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference."

Section 3. Section 2-18-1012, MCA, is amended to read:

"2-18-1012. Grievance procedure. If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government ~~requiring such~~ to require an action ~~as will~~ to resolve the employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference."

Section 4. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the ~~unemployment insurance administration account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 5. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of administrative decision. (1) A department default order, a decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an

order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer."

Section 6. Section 39-3-216, MCA, is amended to read:

"**39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

(3) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause."

Section 7. Section 39-3-217, MCA, is amended to read:

"**39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the party may appeal the decision to the board. The hearing before the board is for review only~~,~~ and ~~the~~ may be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the

hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at ~~his~~ the party's last-known address~~,~~ and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."

Section 8. Section 39-3-403, MCA, is amended to read:

"**39-3-403. ~~Regulations~~ Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.~~"

Section 9. Section 39-31-105, MCA, is amended to read:

"**39-31-105. Administrative procedure act applicable-- conduct of hearing.** All hearings and appeals ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference."

Section 10. Section 39-31-309, MCA, is amended to read:

"**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the

report is submitted to the parties, the report must be made public.

(5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by ~~the board and~~ the parties ~~concerned~~. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact finder~~."

NEW SECTION. **Section 11. Repealer.** Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

NEW SECTION. **Section 12. Applicability.** [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals requested on or after [the effective date of this act].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0047, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising laws relating to the Board of Personnel Appeals; allowing substitute management and labor representatives at board proceedings; authorizing the board and its hearing officers to conduct hearing and appeals by telephone or by videoconference; requiring that money forfeited for failure to pay standard prevailing rates be deposited in the employment security account rather than in the unemployment insurance administration account; clarifying that decisions by the board and by a hearings officer that are reviewed and affirmed by a district court may be reduced to an enforceable order or judgment; conforming rulemaking authority of the commissioner of labor and industry to the montana administrative procedure act; eliminating the board's cost sharing for fact finding not initiated by the board.

Assumptions:
1. With the passage of this legislation, there will be no fiscal impact.
2. A portion of this legislation is in response to Judge McCarter's decision WCC #9401-6985 of 1994, which called into question telephonic hearings because they are not explicitly allowed in statute.
3. If this legislation is not approved, there would be a projected state special revenue employment security account cost of $47,936 in FY96 and $35,472 in FY97 for 1.00 FTE new hearings officer and travel for hearings officers. Without this legislation, hearings officers will be required to conduct hearings at locations across the state as agreed upon by all parties. Wage and hour and collective bargaining hearings would require at least seven hearings officers travelling, each making about eight round trips per year.

FISCAL IMPACT:
None, if this legislation is approved. However, should this legislation not be approved the Department of Labor and Industry would experience increased costs of about $47,936 in FY96 and $35,472 in FY97.

Dave Lewis 1-6-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Don Larson
DON LARSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0047, as introduced

HB 47

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 15:28
RUN DATE.... 04/08/95

HOUSE BUSINESS & LABOR

CHAIRMAN--BRUCE SIMON
SECRETARY-ALBERTA STRACHAN
NORMAL SCHEDULE => SITE: ROOM 104 DAYS: M,T,W,T,F TIME: 8:00 A.M.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0028	SCHWINDEN, DORE 1/02	1/05	ALLOW LOTTERY AGENT THAT DIDN'T SELL TICKET TO PAY PRIZE PASS AS AMENDED 1/11 VOTE: 18-0		1/05
HB0030	HARPER, HAL 1/02	1/06	CLARIFY COAL TRUST AVAILABLE FOR IN-STATE INVESTMENT DO PASS 1/11 VOTE: 18-0		1/11
HB0031	EWER, DAVID 1/02	1/05	EXEMPT MINOR AGE OFFICIAL FOR NONPROFIT GROUP FROM CHILD LABOR STANDARDS ACT PASS AS AMENDED 1/6 VOTE: 18-0		1/05
HB0033	SCHWINDEN, DORE 1/02	1/05	ALLOW BD OF BARBERS TO IMPOSE PENALTIES & RECOVER COSTS FOR LAW VIOLATIONS DO PASS 1/11 VOTE: 11-7		1/11
HB0034	HARRINGTON, DAN 1/02	1/10	UNEMPLOYMENT COMP TO NONCERTIFIED SCHOOL EMPLOYEES BETWEEN TERMS TABLED ON 1/11 VOTE: 11-7		
HB0039	HARRINGTON, DAN 1/02	1/10	INCREASE MINIMUM WAGE WITH EMPLOYER OPTION TO APPLY INCREASE TO HEALTH CARE TABLED ON 1/11 VOTE: 11-7		
HB0047	LARSON, DON 1/02	1/06	GENERAL REVISE BOARD OF PERSONNEL APPEALS; REPEAL RESTAURANT WAGE PROTECTION DO PASS 1/6 VOTE: 18-0		1/06
HB0052	KOTTEL, DEB 1/02	1/03	EXEMPT CENSUS ECONOMIC INFO CENTER FROM COPY SERVICE FEE LIMITS TABLED ON 1/04 VOTE: 10-8		
HB0053	JOHNSON, JOHN 1/02	1/04	EXTEND BOARD OF PHARMACY RULEMAKING TO COVER OUT-OF-STATE SERVICE PHARMACIES TABLED ON 1/11 VOTE: 18-0		
HB0066	WISEMAN, WILLIAM 1/02	1/04	TRANSFER BOILER, CRANE, BLASTER LICENSING TO DEPT OF COMMERCE PASS AS AMENDED 1/19 VOTE: 18-0		1/19
HB0068	SCHWINDEN, DORE 1/02	1/04	GENERALLY REVISE INDUSTRIAL SAFETY LAWS PASS AS AMENDED 1/19 VOTE: 18-0		1/19

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, January 6, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 30, HB 47
Executive Action: HB 47

HEARING ON HB 30

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Lewis & Clark Co., said this bill was brought before the committee by the Board of Investments and is to clarify exactly how the board is to calculate 25% of the tax

CHAIRMAN SIMON asked that if this bill were not successful would that then send a message that the Science and Technology money terminology should read "may" and instead of "shall be". He also said there was some concern about Science and Technology in that it may not even be there in the future so this would further clarify making a definite policy decision about whether or not that $25 million is included in the mix. **Mr. South** said he preferred specific direction. If the allocation were taken away, another bill would be necessary.

REP. ELLIS said it was a fact that these investments are a little less liquid and whether this would play into the fact that this bill is before us. **Mr. South** said this bill has nothing to do with the kind of investments. The board's concern and interest is simply a clarification as to whether that allocation is part of the 25% or not.

CHAIRMAN SIMON said the investment that Science and Tech is making is investment in Montana industry. **Mr. South** affirmed this.

Closing by Sponsor:

REP. HARPER said that in reviewing the fiscal note, the Board of Investments has a good track record. The permanent trust is an endowment that is 10% of all of the general fund expenditures. So it is truly an endowment in the way it supports and funds the in state.

HEARING ON HB 47

Opening Statement by Sponsor:

REP. DON LARSON, HD 58, Missoula County, said this bill was established by the Department of Labor and Industry. This bill revises the laws relating to the Board of Personnel Appeals by allowing substitute management and labor representatives at board proceedings. This bill authorizes the board and its hearings officers to conduct hearings and appeals by telephone or by video conference. It requires that money forfeited for failure to pay standard prevailing wages be deposited in the employment security account rather than in the unemployment insurance administration account. It clarifies decisions by the board and by a hearings officer that are reviewed and affirmed by a district court which may be reduced to an enforceable order or judgment. This bill would also conform rulemaking authority of the commission of labor and industry to the Montana administrative procedure act.

It would eliminate the board's cost sharing for factfinding not initiated by the board and repeal the restaurant, bar, and tavern wage protection act.

Proponents' Testimony:

John Andrew, Department of Labor and Industry supports this bill. This bill has many sections but many of these provisions are similar in nature and represent clarification of procedural problems identified by the department and its appellate board. This bill would represent balanced representation on the board, assure cost control in the factfinding proceedings area, memorialize the current process of conducting telephone hearings while dealing with potential cost items associated with pending litigation which involves the telephone hearing process. This bill would also remove a rather burdensome lot who provide a minimal amount of recovery for employees of the state.

Mark Staples, Montana Tavern Association, stated this bill was thought to be a protective measure and was not discriminate against the entire industry to assume this was the industry that would not pay its employees until three years experience. The board bore that responsibility only to find that coverage was not available. Four million dollars is being held up in terms of those kinds of security instruments.

Melissa Case, Hotel Employees and Restaurant Employees Union supports this legislation especially the portion of the bill dealing with repealing the restaurant bar and tavern wage protection act. **EXHIBIT 1**

Stuart Doggett, Executive Director, Montana Innkeepers Association said he supported this legislation and compliments the department for coming forward with a good bill that is timely and needed simply to repeal the Restaurant, Bar and Tavern Act.

Don Judge, AFL-CIO said he was really not a proponent or opponent but was in support of the hearings process by the telephonic method which is moving into the new age. He said he had participated in such hearings on behalf of the insurance division and this has made it much easier for all parties to conduct those hearings rather than having people come to Helena. There is no opposition from the public employee affiliates to the change in the cost of the factfinding relative to the board currently paying 1/3 of that cost. This will now require the union to pay 1/2 the cost and the employer to pay 1/2 the cost rather than having the state provide 1/3 the cost of factfinding.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIS stated that on page 2, lines 13-18, where the board is allowed to appoint another member, he asked why the board was

allowed to appoint another member instead of the Governor? **Mr. Andrew** said the discussion that occurred on the board was to the effect of the chair being already appointed in that manner by the board. Some of the thinking is it gives the board the ability to pick an individual. The Governor already makes many appointments and the feeling was since they have the ability to appoint the chair that the board would also have the ability to do the alternates. The board does have rulemaking authority. Assuming that happens, input would be received from the public as to mechanisms about appointing the alternates.

REP. ELLIS questioned the rulemaking authority. **Mr. Andrew** said the matter is based on court precedent. It is a claim filed under the wage payment act under which there is also rulemaking authority. **REP. ELLIS** then asked how extensive the rules are and can an average employer understand pretty well his responsibility or are these rules so extensive that it is hard for the average person to understand. **Mr. Andrew** stated there were two things being discussed. This particular section of law deals with the rules that deal with interpretation of the minimum wage and overtime law. They define what constitutes hours of work, regular rate of pay, overtime, etc. These rules are lengthy and are patterned very much after the federal rules which provide for a minimum wage and overtime law. These rules may be easy for one person to define and difficult for another.

CHAIRMAN SIMON asked if this were a temporary appointment. **Mr. Andrew** said yes. The alternate for the chair is one individual who has had experience with the board. Essentially, that is a permanent alternate appointment. In the time the current chair has been on the chair he has been there for all of the meetings. Alternates will be called on a very infrequent basis.

REP. EWER asked if there were any other boards that have been empowered to select another board member when these board members are appointed by the Governor. **Mr. Andrews** said he was not aware of any but that he was also not that well versed on boards. He felt it was a unique circumstance that the Board of Personnel Appeals now picks its alternate presiding officer.

REP. EWER then questioned the bill as it was drafted now as far as an alternate being picked by fellow board members and not by the Governor. **Mr. Judge** stated he was not objectionable to the way the bill was drafted now. It will be used rarely but in fact will be a good option rather than having a board that is imbalanced on a hearing. Currently, the board can conduct a hearing where there are two employee representatives, an employer representative and a neutral and this constitutes the majority of the board. The employers do not have their fair share of that

board. The same thing can happen if an employee representative does not show up for a hearing the board hears the case with 2 employers, 1 neutral and 1 employee representative.

REP. EWER then said in regard to telephone conference calls - he had a distinctive bias against that because if he did have a grievance, when there is a meeting face to face it would be more appropriate. Constituents have called who have had very heart rendering stories of how they have been hurt by their employer and after going to the board, the board reviews the case and the employee loses. At least these people went face to face in the hearing they were granted. Is this really the way to go. There is something that you can get face to face that you cannot get over the telephone line. **Mr. Judge** said that after having been at the negotiating table for a number of years, and having participated in a number of hearings, he concurred that the best way of conducting hearings is doing it face to face. That however, is not always possible and for some individuals filing appeals it is in fact precluded. They are not covered on their transportation mileage to get to those meetings. In one case the hearing would not have occurred on a timely basis had all the parties by necessity come together for that hearing. The appellate was in Arlee, **Mr. Judge** was in Billings and the board was in Helena attempting to conduct the hearing. The claimant was the person saying he would rather have the hearing conducted in this manner rather than having the hearing conducted a few months later. It is permissive, not mandatory.

REP. OHS asked if hearings were now being conducted by telephone. **Melanie Simmons, Supervisor, Hearings Bureau, Department of Labor and Industry** said that two-thirds of the hearings are conducted by telephone. Most of the collective bargaining hearings are held in person.

Closing by Sponsor:

REP. LARSON said again that telephone conference calls was an option. There are approximately 1800 hearings per year or approximately six per day. They are keeping the cost of government down.

TAPE 1, SIDE B.

EXECUTIVE ACTION ON HB 47

Motion: **REP. LARSON MOVED DO PASS ON HB 47.**

Discussion:

REP. ELLIS said he was concerned with the fact of a disparity of influence regarding the board when a governor appointee is not made. It would be better to have the Governor make an appointment.

Motion: **REP. ELLIS MOVED THE AMENDMENT OF CONCEPT.**

Discussion:

REP. LARSON said he would object to the amendment because of the nature of their business, they have so many hearings they cannot be waiting for the Governor to make an appointment. That may take days or weeks or months and they are doing an incredible amount of hearing matters. It is imperative that the board be constituted for these hearings.

REP. COCCHIARELLA said the importance of timing this is the big issue. If the board is not balanced or at least the members would not be able to get the number of hearings done that are required. Some of the appeals go on and on. If the Governor were asked what he would choose he would probably say he would not need to make that appointment.

REP. ELLIS said he understood that the makeup of the board was not being done but all people who represent labor or management do not see the issue as the same and still believe there is some opportunity for mischief.

CHAIRMAN SIMON then reminded the committee that this bill was introduced by the request of the department so it would be assumed this is the Governor's bill and therefore he approves of this procedure.

REP. EWER said he concurred in some ways and said he was concerned about the precedent of having board members in a judicial capacity select the wrong board members. Expediency may be important today but one way of going around this is that of having the Governor have a pool of alternates. He makes hundreds of appointments and he does it through his staff. Having five extra is not a problem for the Governor's office. The integrity of the process is then preserved.

Motion/Vote: **A roll call vote was taken which failed 8-10 with REPS. SIMON, PAVLOVICH, COCCHIARELLA, DEVANEY, FORBES, MARSHALL, MCKEE, OHS, SLITER and TUSS voting no.**

Motion/Vote: **A MOTION WAS MADE ON HB 47 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON HB 30

Motion: **REP. PAVLOVICH MOVED HB 30 DO PASS.**

Discussion:

REP. LARSON said that he supported this bill.

REP. COCCHIARELLA said it might be good if the Department of Natural Resources explain the flow charts.

HOUSE STANDING COMMITTEE REPORT

January 6, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 47** (first reading copy -- white) **do pass.**

Signed: *Bruce Simon, Chair*

Committee Vote:
Yes 18, No 0.

050937SC.Hbk

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 1-6-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 1-6-95 BILL NO. HB 47 NUMBER _____

MOTION: ELLIS AMENDMENT

NAME	AYE	NO
Rep. Bruce Simon, Chairman		X
Rep. Norm Mills, Vice Chair, Maj.	X	
Rep. Bob Pavlovich, Vice Chair, Min.		X
Rep. Joe Barnett	X	
Rep. Vicki Cocchiarella		X
Rep. Charles Devaney		X
Rep. Jon Ellingson	X	
Rep. Alvin Ellis, Jr.	X	
Rep. David Ewer	X	
Rep. Rose Forbes		X
Rep. Jack Herron	X	
Rep. Bob Keenan	X	
Rep. Don Larson		X
Rep. Rod Marshall		X
Rep. Jeanette McKee		X
Rep. Karl Ohs	X	
Rep. Paul Sliter		X
Rep. Carley Tuss		X

EXHIBIT 1
DATE 1-6-95
HB 47

Mr. Chairman, members of the committee for the record my name is Melissa Case. I am here today representing the Hotel Employees and Restaurant Employees Union. We are in support of the portion of the bill dealing with repealing the Restaurant Bar and Tavern Wage protection act. We are supporting the repeal for the following reasons:

- It is not being effectively enforced now, the Dept. is inadequately staffed and will face more cuts that will impact this program. The act is certainly not a deterrent to opening a new business.
- There are other hurdles for opening a business , especially in liquor and gaming, as a result most individuals do not go into it lightly. The have loans and financing and a long term financial plan. Default and closure is unlikely.
- Actual R, B, T Act bond money collected in closed businesses since 1986 is

  -wages : $13,365.28

  -Unemployment Insurance: $11,401.11

  -Workers Comp.: $5,708.80

  This amount is nothing compared to the $1,517,865 in bonds currently on file with the state. It is obvious that this is an overkill approach.
- There is ample and increasing financial support and counseling for small business to avoid defaulting on payroll or payroll taxes, we should be using these programs.
- There are other ways workers can collect wages if an employer attempts to default. It is relatively easy to obtain an attorney, since unpaid wages can be collected as treble damages in court.
- If a new business is inclined to have a collective bargaining agreement, they will be able to pay out more in workers wages and benefits if they do not have to come up with bond money.
- Insurance companies report that the bonds required are getting harder and harder to secure, making the Act even more impossible to enforce.

Thank You for your time, I hope you will support passage of H.B 47.

Melissa Case
H.E.R.E

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor SUB-COMMITTEE DATE 1/6/95

BILL NO. HB 47 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Don Judge	MT STATE AFL-CIO	Information	
John Andrew	State of Montana - Dept of Labor	✓	
Melissa Case	H.E.R.E	✓	
MARK STAPLES	MONT TAVERN ASSOC	✓	
Pat Clinch	MT state council Firefighters	Information	
Stuart Doggett	Montana Innkeepers Assoc.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 10:02
RUN DATE.... 04/06/95

SENATE LABOR & EMPLOYMENT RELATIONS

CHAIRMAN--TOM KEATING
SECRETARY-MARY FLORENCE ERVING
NORMAL SCHEDULE => SITE: ROOM 413/415 DAYS: T,TH,S TIME: 3 P.M. OR ON ADJOURN

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0031	EWER, DAVID 1/10	1/17	1/19	EXEMPT MINOR AGE OFFICIAL FOR NONPROFIT GROUP FROM CHILD LABOR STANDARDS ACT CONCUR AS AMENDED 1/24 VOTE: 9-0		1/25
HB0047	LARSON, DON 1/11	1/17		GENERAL REVISE BOARD OF PERSONNEL APPEALS; REPEAL RESTAURANT WAGE PROTECTION CONCUR AS AMENDED 1/19 VOTE: 9-0		1/20
HB0066	WISEMAN, WILLIAM 1/26	2/28		TRANSFER BOILER, CRANE, BLASTER LICENSING TO DEPT OF COMMERCE TABLED ON 03/15 VOTE: 9-0		
HB0068	SCHWINDEN, DORE 1/26	2/28		GENERALLY REVISE INDUSTRIAL SAFETY LAWS CONCUR AS AMENDED 3/14 VOTE: 9-0		3/16
HB0098	PAVLOVICH, BOB 1/18	1/31		EXEMPT DIRECT SELLERS FROM OVERTIME, MINIMUM WAGE, WORKERS' COMP AND UI CONCUR 1/31 VOTE: 8-1		2/01
HB0100	MCKEE, JEANETTE 2/21	3/07		REVISE CERTAIN UNEMPLOYMENT INSURANCE LAWS CONCUR 3/7 VOTE: 8-1		3/09
HB0114	AHNER, CHRIS 1/17	2/02		CLARIFY NATIONAL GUARD LEAVE OF ABSENCE FOR STATE DUTY CONCUR 2/9 VOTE: 9-0		2/09
HB0152	COCCHIARELLA, VICKI 1/25	2/14		AUTHORIZE REDUCTION IN SECURITY DEPOSIT FOR SELF-INSURERS CONCUR 2/14 VOTE: 9-0		2/27
HB0168	ORR, SCOTT 2/06	2/28		REVISE WORK COMP RATES AND BENEFITS FOR VOLUNTEER FIREFIGHTERS CONCUR 2/28 VOTE: 9-0		3/02
HB0200	BERGMAN, ELLEN 2/02	3/07		GENERALLY REVISE WORKERS' COMPENSATION ACT CONCUR AS AMENDED 3/9 VOTE: 9-0		3/11
HB0216	COCCHIARELLA, VICKI 1/24	2/14		CLARIFY STATUS OF SPOUSE UNDER WORKERS' COMPENSATION CONCUR 2/14 VOTE: 9-0		2/27

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 17, 1995, at 1:00 P.M.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 47
HB 31
SB 80
Executive Action: None.

HEARING ON HB 47

Opening Statement by Sponsor:

REPRESENTATIVE DON LARSON, HD 58, Seeley Lake, stated HB 47 was introduced at the request of the Department of Labor. **REP. LARSON** stated the bill clarifies statute concerning alternative membership on the five member board of personnel appeals; grants the board the ability to testify in hearings by telephone teleconference mechanisms; clarifies the ability of district courts to enter judgements; and enables the department to allocate the cost of fact finding to a professional fact finder. The bill also appeals the little used and discriminatory Bar and Restaurant Protection Act. The bill has no fiscal impact, unless killed, then a negative amount affects the General Fund. The

effective date is immediate due to the number of hearings and the desire to cut costs.

REP. LARSON stated additional legislation is pending if the telephonic legislation is not accepted. Cases would still continue to be heard in person. Since the Board of Personnel Appeals is an appellate court, members are restricted from traveling to different venues. The parties involved in litigation would to travel to Helena.

Proponents' Testimony:

John Andrew, Labor and Industry, Helena, MT, declared support of HB 47. The bill represents an effort to insure balanced representation on the board, cost control of the fact finding process, and is an attempt to memorialize the current practice of conducting telephonic hearings. At the same time, the bill deals with potential cost items, associated with pending litigation involving telephonic hearings.

Section 1, which was requested by the five member board of personnel appeals, deals with the Collective Bargaining Act for public employees, public and private sector wage complaints, state employees classification appeals, and a variety of other grievances. The proposed language is acceptable to the board, should a board member have to refuse him/herself from deliberation. The board will be able to appoint an alternative member in order to assure balance. Language is similar to the current language used to appoint alternative providing officers.

Section 2 allows the use of telephone or video conferencing mechanisms to conduct hearings. The section deals with the Department of Transportation (DOT) grievance hearings. The DOT grievances are limited; consequently, the board is submitting language to conform with other sections of law dealing with telephonic conferences.

Section 3 allows similar telephone mechanisms to conduct state classification and pay system hearings.

Section 4 is a housekeeping item, correcting the name of a revenue account for collected prevailing wage enforcement penalties. The legislation ensure compliance with SB 270, introduced in the 1993 Legislative session.

Section 5 clarifies the section of law dealing with the ability of district courts to enter claim judgments, subject to judicial review. Earlier, the section was questioned by a Yellowstone County District Court Judge, and HB 47 clarifies judicial concern.

Section 6 clarifies the default issue and contains decision penalties issued by Department of Labor and Industry. **Mr. Andrew** stated that pending litigation exists if HB 47 does not pass.

Cases would continue to be held in person in Helena. The Board of Personnel Appeals is an appellate court, and the board is not allowed to travel to various venues. The Board has successfully used telephones as an alternative communication method.

Section 8 removes archaic language. The Montana Minimum Wage and Overtime legislation had been enacted prior to the enactment of the Administrative Procedure Act. Existing language needed to be updated. The department retains rule making authority.

Section 9 deals with telephones and video conference hearings.

Section 10 deals with fact finding. Public sector parties, at the time of stalemates, have the option to request a non-binding hearing. Currently, the Board of Personnel Appeals is obligated to split hearing costs with labor organization and the public employer. House Bill 47 will require the cost to be split between labor and the public employer, as is the current grievance arbitration split. If the board requests the fact finding activities to be held, the board will share one third of the cost.

Section 11 repeals the restaurant bar and tavern wage protection act, which provides, in the absence of three year favorable experience ratings, a restaurant bar and tavern owner/operator to post surety to guarantee employee wages. Acceptable surety forms are letters of credits, certificates of deposit, and bonds. The departmental feedback from restaurant-tavern owners is that the reporting procedures are costly and timely. Most insurance companies are not aware of bonding requirements; consequently bonds may not be issued. House Bill 47 poses several problems for employers. The recovery of the law has been minimal; the law is difficult to enforce; the industry labels the law discriminatory; and little return of capital has been realized. The department urges support of HB 47.

Opponents:

Mark Staples, Montana Tavern Association, stated the association agrees the bill is discriminatory towards tavern and restaurant businesses. Only restaurants and tavern businesses are required to provide security to insure their employees are paid. **Mr. Staples** stated many restaurant and tavern businesses do fail, but the law has not worked because it is near impossible to get bonds to cover security of deposits. Bonding/insurance companies are not knowledgeable about the law. Tied-up capital amounts to approximately four million dollars. Coverage and satisfied claims for employees are minimal. As a private attorney, **Mr. Staples** explained that wage claims against owners are satisfied first, due to statute. Labor organizations supported the original statute, and restaurant and tavern owners complied. Now, data supports the need for statutory repeal.

Stuart Doggett, Montana Innkeepers, supports HB 47. **Mr. Doggett** expressed agreement concerning the need to repeal obsolete laws.

Melissa Case, Hotel Employees Union and Restaurant Employees Union, stated support of HB 47. Effective enforcement is a proven problem. Long term financial plans are currently required to set up new businesses. The plans provide data concerning owner's financial abilities. If wages are defaulted, litigation is a possible avenue of recourse, as is collective bargaining.

Don Judge, Montana State AFL-CIO, stated the labor movement has no objections concerning the alternative appointment to the Board of Personnel Appeals and has no objections to the hearing process. **Mr. Judge** stated the AFL-CIO defers to the judgment of the hotel/restaurant employees concerning the wage tax employment bond protection act repeal. No objections are submitted.

Opponents:

Michael Keedy, Montana School Board Association, (MSBA), stated opposition to section 9. **Mr. Keedy** described the difficult process of accessing witness credibility over the telephone, compared to the assessment of witness credibility in a face-to-face environment. The association urged the committee to accept language to allow hearings to be conducted telephonically with the consent of the parties involved, versus an unilateral discretion of the hearings officer.

Questions From Committee Members and Responses:

SENATOR BAER stated he agreed with **Mr. Keedy** about people who want to appear at regular hearings to present their side. **SENATOR BAER** expressed concern over section 8, rule making authority, and questioned continued proper supervision. **Mr. Keedy** stated the rule making authority is preserved, as is the Administrative Procedure Act. The department still has to go through the regular process, as would any agency, to give public notice of the hearing, so affected parties continue to have the opportunity to appear and comment.

SENATOR BAER asked for confirmation concerning the presence of rule making authority. **Mr. Keedy** stated the reason the language reads as it does is to indicate the language existed before the time of the update.

Mark Staples offered clarification. **Mr. Staples** stated he is not representing the Department of Labor on this bill. **Mr. Staples** stated he has no objections to the rule making authority. He represents the Tavern Association and is testifying only on the repeal of the Wage and Protection Act.

SENATOR SUE BARTLETT questioned **John Andrew** about how often the board initiates and pays for part of the fact finding cost. **Mr. Andrew** replied, as far as he knows, the board never has required

the fact finding process. **SENATOR BARTLETT** asked **Mr. Andrew** to respond to Mr. Keedy's request that video conferencing and telephonic fields require the concurrence of all parties. **Mr. Andrew** replied he deals only with the Board of Personnel Appeals issues, relating to wage and complaints classification appeals and collective bargaining cases. From a practical standpoint and from the collective bargaining arena, **Mr. Andrew** stated he believes the parties come to Helena to argue before the Board of Personnel Appeals, rather than using tele-conferencing methods to communicate. **Mr. Andrew** stated he cannot address the face to face or telephonic criteria used by hearing examiners, but questioned the difficulty of obtaining consents. **Mr. Andrew** stated the obvious consent difficulty is that it is just another step in the process. The language is permissive, so the hearing examiner looks at the case's complexity and the wishes of the parties.

SENATOR WILSON asked **Mr. Keedy** if the only objection is the telephone and video conference language. **SENATOR WILSON** asked, if he offered an amendment to strike "telephone", would video conference be agreeable.

Mr. Keedy stated such an amendment would change the thrust/intent of the proposed legislation. A simple consent by all affected parties, making the telephonic hearings optional, would suffice. **SENATOR WILSON** asked **Mr. Keedy** that if he took issue with both the telephone and video conferencing, should a distinction be made.

Mr. Keedy stated a distinction exists between video taped conference and telephonic conference in terms of the hearings officer's opportunity to evaluate. **Mr. Keedy** expressed concern arising from the desire to economize the appeal process.

<u>Closing by Sponsor</u>:

REP. LARSON stated HB 47 is a cleanup bill. Four million dollars will be returned to the tavern industry owners. The hearing process will more efficient, and labor supports the bill. **REP. LARSON** consented to the language of the proposed amendment; nevertheless, **REP. LARSON** stated the bill's language is too permissive. The statement saying the department "may" conduct telephonic or teleconference hearing is too permissive. Over 2,000 hearings are conducted each year. In the interest of saving time and money, telephonic opportunities must be available. Factfinding is seldom used, perhaps six times a year, and is non-binding and ineffective. House Bill 47 generally revises laws relating to the Board of Personnel Appeals. The legislation allows substitute management and labor representatives at board proceedings, and authorizes the board and its hearing officers to conduct hearings and appeals by telephone or by video conferences. The legislation requires that money forfeited for failure to pay standard prevailing wages be deposited in the employment security account rather than in the

unemployment insurance administration account. The legislation clarifies that decisions by the board and by a hearings officer that are reviewed and affirmed by a district court may be reduced to an enforceable order or judgement. The legislation conforms rulemaking authority of the Commissioner of Labor and Industry to the Montana Administrative Procedure Act, and eliminates the board's cost sharing for fact finding not initiated by the board. **REP. LARSON** urged support of HB 47. **SENATOR BARTLETT** will care HB 47 to the floor.

HEARING ON HB 31

Opening Statement by Sponsor:

REPRESENTATIVE DAVID EWER, HD 53, Helena, stated HB 31 addresses the current child labor law statute. The proposed change concerns lines 26, 27, and 29. The change will exclude children who serve as officials, referees for non-profit athletic organizations. **REP. EWER** discussed paying referees at athletic events under current statutes. Concern was raised by the league membership, and **Judge J. Sherlock** requested **REP. EWER** to carry the bill. The House Committee improved the bill by making sure officiating minors do not serve adult events. The legislation will exempt a minor employed as an official or referee for a nonprofit athletic organization from the provisions of the Montana Child Labor Standards Act. **REP. EWER** urged passage of HB 31, and asked for an immediate effective date.

Proponents' Testimony:

Don Judge, AFL-CIO, Helena, MT, stated he also represents **Father Jerry Lowney, Catholic Social Justice Committee, Helena, MT. Mr. Judge** said he concurs with the proposed legislation. House discussion focused on the effects of employee insurance and concluded the employee insurance is not affected. The bill allows nonprofit organizations to pay the child referees' wages.

Opponents' Testimony: None.

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR FRED VAN VALKENBURG expressed concern about the amendment. There are situations where minors officiate at adult events. Sixteen and seventeen year old minors work as umpires for adult softball leagues. They referee in adult basketball leagues, etc. **SENATOR VAN VALKENBURG** questioned the provision that may indeed prohibit sixteen and seventeen year old minors from employment. **(EXHIBIT 1)**

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE January 17, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	★		
SUE BARTLETT	★		
STEVE BENEDICT	★		
JIM BURNETT	★		
CASEY EMERSON	★		
FRED VAN VALKENBURG	★		
BILL WILSON	★		
GARY AKLESTAD, VICE CHAIRMAN	★		
TOM KEATING, CHAIRMAN	★		

SEN:1995
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DATE January 17, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 47 HB 31 SB 80

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Name	Representing	Bill No.	Check One: Support	Oppose
Daniel J Rzepkoch	Myself	SB80		✓
Claudia Sims		SB80		✓
John Andrew	DOLI	HB47	✓	
ROBERT PRECHT	EAGLE COMMUNICATIONS	SB 80	✓	
JANE ENGLISH	EAGLE COMMUNICATIONS	SB 80	✓	
Morgan McCorkle	myself	SB80		✓
Riley Johnson	Montana Broadcasters Assn	SB 80	✓	
Stuart Doggett	Montana Innkeepers Association	HB47	✓	
R.A. "Gus" Koernig	SELF	SB80		✓
MATT RAYMOND	Self	SB80		✓
[redacted]	[redacted]	[redacted]		[redacted]
Melissa Case	Hotel Employees & Rest. Emp. Union	SB HB47	✓	
David Owen	MT Chamber	SB 80	✓	
George Anderson	AFSCME	HB47	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/17

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 47

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Name	Representing	Bill No.	Support	Check One: Oppo
Michael Keedy	MSBA	47		X
Teresa Reardon	self	80		X
Don Judge	MT STATE AFL-CIO	HB 47/31	XX	
Don Judge	MT STATE AFL-CIO	SB 80		X
RONALD J DAVIS	KBOW/KOPR BUTTE	SB 80	XX	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 19, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

{Tape: One; Side: One}

Committee Business Summary:

Hearing:	SB 125
Executive Action:	HB 47
	SB 80
	HB 31

CHAIRMAN TOM KEATING turned the gavel over to **VICE CHAIRMAN GARY AKLESTAD** so that he could present SB 125 to the committee.

HEARING ON SB 125

Opening Statement by Sponsor:

SENATOR TOM KEATING, SB #5, Billings, MT, stated SB 125 is an act exempting certain petroleum land professionals from the requirements of unemployment insurance and Workers' Compensation laws. For the purposes of exemptions, professional petroleum

SENATOR AKLESTAD stated the committee can clarify the definition during executive action. **SENATOR AKLESTAD** asked, if the language was taken out, how does one distinguish between an individual who is an independent, doing this work, and the person who does this type of work as an independent and also does it for a company. How should the line be drawn. **SENATOR KEATING** explained the answer to that question depends on how the term "independent" is applied. An independent petroleum landsperson means the person is self employed. In this instance, as an independent contractor, it means "not employed, but self employed". There are independent operators, as well as company operators. As an independent landsman, he/she can do work for an independent contractor, and he/she would not be his/her employee. The word independent applies differently to the type of profession.

SENATOR EMERSON asked if there were any problems for these people who may want Workers Compensation coverage. **SENATOR KEATING** stated, as an independent contractor, the person would have to get private insurance and disability coverage. **SENATOR KEATING** stated he did not think the person could buy a Workers' Comp policy among themselves. **Laurence Hubbard, State Fund**, stated an independent contractor, the professional landsperson, is a person who is otherwise exempted from Workers' Comp coverage.

Closing by Sponsor:

SENATOR KEATING closed the hearing on SB 125. **SENATOR KEATING** urged the committee, on the behalf of the 4,000 independent petroleum land professionals, to give SB 125 a DO PASS recommendation.

The gavel was returned to **CHAIRMAN TOM KEATING** by **VICE-CHAIRMAN GARY AKLESTAD** for executive action. **CHAIRMAN KEATING** stated the process is somewhat cumbersome. The usual procedure is to have the first motion on the bill, then a motion to amend. However, **CHAIRMAN KEATING** asked the committee. He, then, stated the consensus of the group was to take up the amendments first. The amendments would be voted on first; then, the bill would be voted on, with or without amendments.

EXECUTIVE ACTION ON HB 47

Motion:

BENEDICT moved to AMEND HB 47.

Discussion:

CHAIRMAN KEATING stated the amendment is the **SENATOR BAER** Amendment. Page 5, line 18, following "video conference", insert "with the consent of the necessary parties"

SENATOR BAER stated both former district Judge Michael Keedy, who is representing the school board association and he have concerns over the language of the bill. A lot of people would be concerned whether or not they wanted to use telephone or video conferencing for the grievance hearings, etc. Therefore, the amendment was created to solve the problems.

Vote:

The motion to amend HB 47 CARRIED UNANIMOUSLY.

Motion/Vote:

SENATOR SUE BARTLETT moved HB 47 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. SENATOR BARTLETT will carry the bill.

EXECUTIVE ACTION ON SB 80

Motion:

SENATOR BURNETT moved SB 80 DO PASS

Discussion:

SENATOR WILSON made a substitute motion to TABLE SB 80.

SENATOR BAER asked **CHAIRMAN KEATING** to explain the ramification of a tabled vote. **CHAIRMAN KEATING** explained if the motion to table is successful, the bill will be placed on the table. It will take a majority vote from the senate floor to get it from the table to second reading. **SENATOR BAER** asked if discussion can be held to determine why the motion to table was made. **CHAIRMAN KEATING** replied no. The motion to table is an attempt to kill the bill.

A roll call vote was taken with **SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING voting NO.**

Motion:

CHAIRMAN KEATING stated the committee will vote on the original motion: **SB 80 DO PASS.**

Discussion:

SENATOR AKLESTAD asked the committee for a recapitulation of the original hearing's testimonials. **CHAIRMAN KEATING** stated the bill deals with the fair labors standards act, section 213. **SENATOR BENEDICT** stated he announced he was not going to vote on SB 80 because of a conflict of interest. Disregard the roll call vote on the table motion. **SENATOR BENEDICT** removed himself from further discussion.

SENATE STANDING COMMITTEE REPORT

January 19, 1995

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration HB 47 (third reading copy -- blue), respectfully report that HB 47 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Thomas F. Keating, Chair

That such amendments read:

1. Page 5, line 18.
Following: "videoconference"
Insert: ", with the consent of the necessary parties"

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

161551SC.SRF

HB 47

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE January 19, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

HOUSE BILL NO. 47

INTRODUCED BY LARSON

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT; CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT; CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212, 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision -- quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who ~~shall be~~ is the ~~chairperson~~ presiding officer.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.

(4) When the ~~chairperson~~ presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual~~,~~ who ~~shall be a person who~~ qualifies under subsection (3)(a)(iii)~~,~~ to serve in the place of the ~~chairperson~~ presiding officer in that proceeding. ~~and he~~ The individual selected shall participate in the ~~decision~~ decisions in that proceeding. There ~~shall~~ may be only one ~~additional chairperson~~ presiding officer replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.

(6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

~~(6)~~(7) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 2-18-1002, MCA, is amended to read:

"2-18-1002. Grievance procedure - hearing -- order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

(2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such~~ to require an action ~~of~~ by the department ~~as will~~ to resolve the employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference."

Section 3. Section 2-18-1012, MCA, is amended to read:

"**2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government ~~requiring such~~ to require an action ~~as will~~ to resolve the employee's grievance. In ~~any~~ a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference."

Section 4. Section 18-2-407, MCA, is amended to read:

"**18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the ~~unemployment insurance administration account, as provided in 39-51-406~~ employment security account, as provided in 39-51-409, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 5. Section 39-3-212, MCA, is amended to read:

"**39-3-212. Court enforcement of administrative decision.** (1) A department default order, a decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an

order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer."

Section 6. Section 39-3-216, MCA, is amended to read:

"**39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ is valid and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due ~~and owing~~ and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) When the department determines that a wage claim ~~exists~~ is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

(3) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause."

Section 7. Section 39-3-217, MCA, is amended to read:

"**39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ the party may appeal the decision to the board. The hearing before the board is for review only~~,~~ and ~~the~~ may be conducted by telephone or by videoconference. The submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the

hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at ~~his~~ the party's last-known address~~,~~ and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision."

Section 8. Section 39-3-403, MCA, is amended to read:

"**39-3-403. ~~Regulations~~ Rulemaking authority.** The commissioner shall ~~make~~ adopt and revise administrative ~~regulations~~ rules to carry out the purposes of this part. ~~Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.~~"

Section 9. Section 39-31-105, MCA, is amended to read:

"**39-31-105. Administrative procedure act applicable -- conduct of hearing.** All hearings and appeals ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, WITH THE CONSENT OF THE NECESSARY PARTIES."

Section 10. Section 39-31-309, MCA, is amended to read:

"**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve ~~such~~ the findings on the public employer and the exclusive representative. The fact finder may make

this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) ~~The~~ When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by ~~the board and~~ the parties ~~concerned~~. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which ~~he~~ the fact finder has been selected or appointed ~~as fact finder~~."

NEW SECTION. **Section 11. Repealer.** Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

NEW SECTION. **Section 12. Applicability.** [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals requested on or after [the effective date of this act].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

-END-